

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>JOSE ELIA DIAZ</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	<b>NO. 19-1297</b>
	:	
<b>MICHAEL CLARK, et al.</b>	:	

**ORDER**

**AND NOW**, this 15<sup>th</sup> day of January 2020, upon considering the Petition for writ of *habeas corpus* (ECF Doc. No. 1), Response (ECF Doc. No. 13), Petitioner's Reply (ECF Doc. No. 16), following careful and independent review of the Honorable Marilyn Heffley's extensive Report and Recommendation (ECF Doc. No. 17), without timely Opposition from the *pro se* Petitioner, for good cause including specifically finding Petitioner failed to demonstrate, but for counsel's alleged errors, he would have insisted on going to trial when faced being convicted on a variety of counts particularly given the DNA evidence and the extensive oral colloquy and written plea filed of record and finding the Post-Conviction Relief Act Court conducted a hearing and evaluated the merits in his post-conviction petition after providing the Petitioner the opportunity to explain his position contrary to the portion of the guilty plea directly contradicting Petitioner's claims, and finding the denial of a third continuance does not deprive this Petitioner of due process, it is **ORDERED**:

1. Judge Heffley's detailed Report and Recommendation (ECF Doc. No. 17) is **APPROVED** and **ADOPTED**;
2. We **DENY** and **DISMISS** the Petition for writ of *habeas corpus* (ECF Doc. No. 1) **with prejudice**;

3. We find no probable cause to issue a certificate of appealability as Petitioner has not demonstrated reasonable jurists would debate the correctness of the procedural aspects of this ruling nor has he made a substantial showing of the denial of a constitutional right;<sup>1</sup> and,

4. The Clerk of Court shall **close** this case.

  
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KEARNEY, J.

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<sup>1</sup> See 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).